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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/640,822	08/17/2000	Heinrich Gers-Barlag	Bei 637- KGB	6834

7590

10/15/2002

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EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 10/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/640,822

Applicant(s)

GERS-BARIAG ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

The Amendment filed 9/17/02, amended claims 16-23 and 25-30.

Response to Applicant's Arguments/Amendment

The Applicant's arguments filed 9/17/02 (Paper No. 18) to the rejection of claims 16-30 made by the Examiner under 35 USC 103 have been fully considered and deemed not persuasive.

The Applicant's arguments and amendment filed 9/17/02 (Paper No. 18) are sufficient to overcome the 35 USC 112 rejections in the previous Office Action.

103 Rejection Maintained

The rejection of claims 16-30 under 35 U.S.C. 103(a) as being unpatentable over Fanger et al. (6,153,204) in view of Msika et al. (5,939,054) is MAINTAINED for the reasons set forth in the Office Action mailed 6/17/02, Paper No. 17, and those found below.

Applicant argues, "there is no generic teachings as to the amount of ingredients envisioned for a water-in-oil emulsion (i.e. limitations)". This argument is not persuasive, as it is not commensurate in scope with the independent claim. While the independent claim does recite percent weights for the oil phase, the claim does not recite percent weights for any of the other constituents. Furthermore, it is respectfully pointed out that Fanger et al. exemplifies water-in-oil compositions wherein the oil phase comprises 10-70% of the composition.

Applicant argues, "The examples of Fanger et al. contain either 4.0% by weight PEG-7 hydrogenated castor oil or 3.5% by weight polyglyceryl-3-dioleate each of which are well known emulsifiers and as such are well in excess of the 0.5% possible in claim 16 and totally counter to the requirement in claim 17 that the water-in-oil emulsion is emulsifier free". This argument is

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not persuasive. The Examiner respectfully points out that it is well-established that consideration of a reference is not limited to the preferred embodiments or working examples, but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art, to person of ordinary skill in the art. In re Boe, 355 F.2d 961; In re Lamberti, 545 F.2d 747,750; In re Fracalossi, 681 F.2d 792, 794; In re Kaslow, 707 F.2d 1366, 1374. In the instant case, the Examiner respectfully directs Applicant to Col. 2, lines 32-34, which states, "w/o lipodispersions, which are the subject-matter of the present invention, are, by reverse analogy, emulsifier-free finely disperse preparations of the water-in-oil type". Thus, Fanger et al. teach emulsifier-free, water-in-oil emulsions.

Applicant argues, "there is no indication or explanation proffered by the examiner as to why it would be expected that the quaternium 14 and 18 would be expected to position itself at the water/oil interface when substituted into the emulsions of Fanger et al". This argument is not persuasive. The Examiner respectfully points out that quaternium 18 hectorite is recited in the instant claims (claim 22) as a preferred modified phyllosilicate pigment particle which exhibits both hydrophilic and lipophilic properties, thus having amphiphilic character and positioning itself at the water/oil interface. Thus, it is not understood why Applicant makes this argument.

Applicant argues, "Msika et al. teaches a fatty phase as comprising 20-60% of the composition. However, it is not stated how this relates to the applicants limitation that the oil phase comprises 10 to 70% by weight of fatty and/or wax components which melt at a temperature of 40 C". This argument is not persuasive, as the Examiner has not relied upon this teaching of the secondary reference to combine the references or reject the claims.

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Applicant argues, in regard to Msika et al., "Emulsions comprising no emulsifiers are exemplified. . . This is incorrect as this 'Total Sunblock Stick' is not an emulsion (what constitutes the aqueous phase)". This argument is not persuasive. The Examiner respectfully points out that Msika et al. was relied upon as a secondary reference for their teachings of specific hectorites. Thus, Msika et al. is not relied upon to teach water-in-oil emulsions or stick forms.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

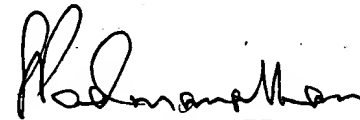
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
September 26, 2002



SREENI PADMANABHAN
PRIMARY EXAMINER

10/14/02